



STATE OF ARIZONA

JANET NAPOLITANO
GOVERNOR

OFFICE OF THE GOVERNOR
1700 WEST WASHINGTON STREET, PHOENIX, AZ 85007

MAIN PHONE: 602-542-4331
FACSIMILE: 602-542-7601

March 7, 2006

The Honorable Donald H. Rumsfeld
Secretary of Defense
Office of the Secretary of Defense
1000 Defense Pentagon
U.S. Department of Defense
Washington, DC 20301-1000

The Honorable Michael Chertoff
Secretary of Homeland Security
Office of the Secretary
U.S. Department of Homeland Security
Washington, DC 20528

Dear Secretaries Rumsfeld and Chertoff:

I write to you jointly regarding the operational control of the Arizona-Mexico Border, and the Homeland Security implications resulting from its current condition. Specifically, this letter is a request for additional Federal attention at the border through the formal approval of funding for the use of the Arizona National Guard in a supportive role to secure our border.

I have met, corresponded, and exchanged memos with each of you personally, or with your respective Departments, on this issue. There is no problem more compelling affecting the State of Arizona today than illegal immigration. As a State, we are dependent upon the Federal government, and particularly upon your Departments, to provide the strategy, resources, and dedication to secure our border.

The United States can regain operational control of this border through a common understanding of the issues at hand, a renewed commitment to the Federal responsibilities of this mission, and the immediate allocation by your Departments of resources necessary to fulfill these commitments.

Current Federal border control policy in the Southwest has funneled illegal immigrant traffic into Arizona, and has left the Border Patrol's Tucson Sector as the primary gateway for illegal crossings along the entire United States-Mexico border. As a result of this paralyzed policy, there are more undocumented immigrants entering the

country through Arizona than through any other state in the nation. Yet, while over 50% of all illegal crossings from the United States-Mexico Border are through my State, only 27% of the Border Patrol officers, nationwide, are stationed in Arizona sectors.

Despite the increase in Department of Homeland Security resources to this area, Congress has still failed to appropriate even the minimum levels of funding for border security that were recommended by the 9/11 Commission and authorized by Congress in the Intelligence Reform and Terrorism Prevention Act of 2004.

I have recently been made aware that the Department of Defense intends to decrease National Guard presence by further cutting critical Guard resources at the border currently acting pursuant to the Arizona National Guard Counter-drug Support Plan, authorized by Section 112 of Title 32. Remarkably, while Arizona suffers a decrease in funding, the United States Army has placed two Stryker Units in New Mexico, with another on the way, to assist in border-related matters. In addition, the Arizona Department of Public Safety continues to receive sporadic cooperation, at best, from Immigration and Customs Enforcement ('ICE') in responding to investigations involving unauthorized migrants.

Arizona is doing its part. Last year, I declared a state of emergency for all of the Arizona border counties, thereby releasing over \$1.5 million in State funds to help combat the effects of illegal immigration in border communities. Furthermore, this January, I sent a \$100 million border security package to our State legislature to strengthen local jurisdictions along the border, increase the region's law enforcement personnel, allocate funds for the purchase of border security equipment and technology, and combat the immigration-related crimes Arizona faces on a continual basis.

Although the State of Arizona should not be a financial or operational substitute for the Federal Government's responsibility to secure our borders, we are nonetheless willing to further assist you in this important Federal commitment. We can provide operational support through the expertise and particularized mission capabilities of the National Guard forces. Specifically, in my December 30, 2005 letter to Secretary Rumsfeld, I delineated a series of activities that the Arizona National Guard could perform within a supportive capacity in order to assist the Federal Government in securing our border. These National Guard functions would be subject to the Department of Homeland Security's Southwest border strategy, and would further take direction from that agency. Moreover, there are numerous sources of statutory authority by which to effectuate such border security activities by the National Guard, as is evidenced by the following:

- Augmentation of current Title 32 Section 112 activity in Arizona through the Drug Interdiction strategy (a strategy that notes that the "proven ease of illegal entry into the United States via the Arizona/Mexico international border may actually be the most dangerous threat included in this state plan");

March 7, 2006

Page 3

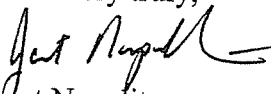
- Title 32, Section 502(f) that allows a member of the National Guard to perform "training or other dut[ies]" in addition to their regularly prescribed functions. Historically, this Section has been liberally applied, and was implemented in the Gulf Region in response to Hurricane Katrina;
- The execution of a Memorandum of Agreement ("MOA") between the Department of Homeland Security and the Department of Defense analogous to the 2002 MOA that was executed between the Immigration and Naturalization Service and the Department of Defense regarding the protection of the Canadian and Mexican Borders;
- Chapter 9 of Title 32 gives the Secretary of Defense the discretion to provide Federal funds to a governor to employ National Guard assets to conduct "homeland defense activities." The statute defines those activities as those that are "undertaken for the military protection" of a "domestic population" of the United States that is "critical to national security." 32 U.S.C. sec. 901.

For further reference, I have attached a memorandum addressing the legal avenues outlined above. (see attached) Clearly, there exists ample legal authority by which to effectuate this request, and there can be no question that, operationally, the Guard can be of invaluable assistance. As stated in a recent letter to my office from the Department of Homeland Security: "the use of the National Guard troops allows ICE and CBP to place more personnel in critical front-line law enforcement roles and we encourage this cooperation."

Returning operational control to our Southwest border is a fundamental Homeland Security mission. Therefore, I respectfully request the Department of Homeland Security to advise formally the Department of Defense as to the necessity of implementing the Arizona National Guard to assist the Federal Government in its mission in Arizona to secure our border, and further that the State of Arizona be reimbursed for these National Guard activities.

Thank you for your cooperation in working to secure the Arizona-Mexico Border. I respectfully request your immediate attention to this matter.

Yours very truly,


Janet Napolitano
Governor

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